INDEX

	Page
Opinion Below	2
Jurisdiction	2
Constitutional and Regulatory Provisions Involved	2
Question Presented	3
Interest of the Amici	3
Statement	4
Summary of Argument	5
Argument	9
I. The First Amendment Protects the Public's Right To Be Informed by the Press About Matters of Public Interest, Including Prisons	9
II. The Right of the Press To Gather News Is an Indispensable Element of the Public's First Amendment Right To Be Informed About Matters of Public Interest	14
III. Section 415.071 Directly and Severely Restricts News Gathering by Denying the Press the Use of a Critical News Gathering Method	18
IV. No Compelling Governmental Interest Supports § 415.071's Total Ban on All Press Interviews With Prisoners Designated in Advance	27
A. Administrative Burdens	28
B. Prison Security	29
1. Newsmen as Risks to Prison Security	30
2. The "Big Wheel" Theory	31
C. Uniformity	34

Page

D. Rehabilitation 36

E. Property Law Concepts 37

F. Practice in Other Jurisdictions 39

G. Conclusion on Asserted Justifications for § 415.071 41

V. A Prisoner's Right To Be Interviewed Is No Substitute for a Press Right To Interview .. 43

VI. Press Interviews With Inmates Should Be Permitted Except Where Serious Administrative or Disciplinary Problems Will Directly and Immediately Result 45

Conclusion 47

Appendix (Letters of Consent) 1a, 2a

Certificate of Service ..... A

TABLE OF AUTHORITIES

Cases:

Adderly v. *Florida*, 385 U.S. 39 (1966) 38

Amalgamated Food Employees v. *Logan Valley Plaza*, 391 U.S. 308 (1968) 38

Associated Press v. *KVOS*, 80 F.2d 575 (9th Cir. 1935), *rev'd on jurisdictional grounds*, 299 U.S. 269 (1936) 15

Associated Press v. *United States*, 326 U.S. 1 (1945).. 9

Baker v. *F & F Investment*, 470 F.2d 778 (2d Cir. 1972), *cert. denied*, 41 U.S. 966 (1973) 17

Bates v. *Little Rock*, 361 U.S. 516 (1960) 17

Branzburg v. *Hayes*, 408 U.S. 665 (1972)....5, 6, 15, 16, 17, 19, 20, 43, 46

Burnham v. *Oswald*, 342 F. Supp. 880 (W.D.N.Y. 1972) 11, 13

Bursey v. *United States*, 466 F.2d 1059 (9th Cir. 1972) 17

Carey v. *Hume*, No. 71-1736 (D.C. Cir., Jan. 28, 1974) 17

Carothers v. *Follette*, 314 F. Supp. 1014 (S.D.N.Y. 1970) 17

Cervantes v. *TIME, Inc.*, 464 F.2d 986 (8th Cir. 1972) 17

Page

Channel 10, Inc. v. *Gunnarson*, 337 F. Supp. 634 (D. Minn. 1972) 15-16
Commonwealth v. *Wiseman*, 249 N.E. 610 (Mass.), *cert. denied*, 399 U.S. 960 (1970) 18
Cox v. *Louisiana*, 379 U.S. 559 (1965) 38
Curtis Pub. Co. v. *Butts*, 388 U.S. 130 (1967) 10, 26
DeGregory v. *Attorney General of New Hampshire*, 383 U.S. 825 (1966) 17
DeJong v. *Oregon*, 299 U.S. 353 (1937) 14
Democratic National Committee v. *McCord, In re Bernstein*, 356 F. Supp. 1394 (D.D.C. 1973) 17
Dietman v. *TIME, Inc.*, 449 F.2d 245 (9th Cir. 1971).. 15
Estes v. *Texas*, 381 U.S. 532 (1965) 19
Flower v. *United States*, 407 U.S. 197 (1972) 29, 39
Fortune Society v. *McGinnis*, 319 F. Supp. 901 (S.D. N.Y. 1970) 17
Garrison v. *Louisiana*, 379 U.S. 64 (1964) 9
Globe Newspaper Co. v. *Saxbe*, Civ. No. 73-3748G (D. Mass. Feb. 12, 1974) 11
Goldberg v. *Kelly*, 397 U.S. 254 (1970) 27
Grosjean v. *American Press Co.*, 297 U.S. 233 (1936)..10, 14
Hillery v. *Procunier*, 364 F. Supp. 196 (N.D. Cal. 1973) 2
Holt v. *Sarver*, 442 F.2d 304 (8th Cir. 1971) 13
Home Bldg. & Loan Assn. v. *Blaisdell*, 290 U.S. 398 (1934) 30
Houston Chronicle Pub. Co. v. *Kleindienst*, 364 F. Supp. 719 (S.D. Tex. 1973), *app. dismissed*, No. 73-3590 (5th Cir. Jan. 11, 1974) 11
Johnson v. *Avery*, 393 U.S. 483 (1969) 27
Kleindienst v. *Mandel*, 408 U.S. 753 (1972) 10, 25-26
Lamont v. *Postmaster General*, 381 U.S. 301 (1965) .. 10
Landman v. *Royster*, 333 F. Supp. 621 (E.D. Va. 1971) 13
Linsey v. *Kellman* (D. Conn., Mar. 20, 1973) (N.Y. Times, Mar. 21, 1973, p. 19) 17
Marsh v. *Alabama*, 326 U.S. 501 (1946) 38
Martin v. *Struthers*, 319 U.S. 141 (1943) 41
McMillan v. *Carlson*, C.A. No. 72-2551-M (D. Mass. Dec. 31, 1973) 11
Mills v. *Alabama*, 384 U.S. 214 (1966) 10
Mitford v. *Pickett*, 363 F. Supp. 975 (E.D. Ill. 1973) .. 12
NAACP v. *Alabama*, 357 U.S. 449 (1958) 17

Page

NAACP v. *Button*, 371 U.S. 415 (1963) 17
New York Times Co. v. *United States*, 403 U.S. 713, 403 U.S. 942 (1971) 11, 19, 26
Nolan v. *Fitzpatrick*, 451 F.2d 545 (1st Cir. 1971) 11-12, 17
Palmigiano v. *Travisono*, 317 F. Supp. 776 (D.R.I. 1970) 12
Police Department of Chicago v. *Mosley*, 408 U.S. 92 (1972) 29, 39, 45-46
Red Lion Broadcasting Co. v. *FCC*, 395 U.S. 367 (1969) 9-10
Roberts v. *Williams*, 456 F.2d 819 (5th Cir.), *cert. denied sub nom. Roberts* v. *Smith*, 404 U.S. 866 (1971) 13
Rosenbloom v. *Metromedia, Inc.*, 403 U.S. 29 (1971) 29, 39, 45-46
Saxbe v. *Washington Post Co.*, No. 73-1265, *cert. granted* (Mar. 4, 1974) 3, 23
Schneider v. *State*, 308 U.S. 147 (1939) 17
Schnell v. *Chicago*, 407 F.2d 1084 (7th Cir. 1969) 15
Seale v. *Manson*, 326 F. Supp. 1375 (D. Conn. 1971) .. 12
Seattle-Tacoma Newspaper Guild v. *Parker*, 480 F.2d 1062 (9th Cir. 1973) 12
Shelley v. *Kraemer*, 334 U.S. 1 (1948) 18
Sheppard v. *Maxwell*, 384 U.S. 333 (1966) 5
Sherbert v. *Verner*, 374 U.S. 398 (1963) 41
Smith v. *Bounds*, Civ. No. 2914 (E.D.N.C. Mar. 14, 1972) 12
Speiser v. *Randall*, 357 U.S. 513 (1958) 41
Stromberg v. *California*, 283 U.S. 359 (1931) 14
Talley v. *California*, 362 U.S. 60 (1960) 41
Thomas v. *Collins*, 323 U.S. 516 (1945) 17
TIME, Inc. v. *Hill*, 385 U.S. 374 (1967) 11
Tucker v. *Texas*, 326 U.S. 517 (1946) 38
United States v. *Liddy, In re Times Mirror Co.*, 354 F. Supp. 208 (D.D.C. 1973) 17
United States v. *Robel*, 389 U.S. 258 (1967) 29

Page

Washington Post Co. v. *Kleindienst*, No. 72-1362 (D.C. Cir. Feb. 21, 1974), *aff'g* 357 F. Supp. 770 (D.D.C.), *stay granted*, 406 U.S. 912, *remanded*, 477 F.2d 1168 (D.C. Cir.), *on remand*, 357 F. Supp. 779 (D.D.C. 1972), *pet'n for cert. filed* (No. 73-1265, Feb. 15, 1974) 11, 12, 17, 20-21, 22-23-24-25, 28, 31, 32, 33, 34-35, 36, 37-38, 39-40, 45

Zemel v. *Rusk*, 81 U.S. 1 (1965) 5, 19

CONSTITUTION, STATUTE AND REGULATIONS:

U. S. Const., First Amend. ..... *passim*

28 U.S.C. § 1253 2

28 C.F.R. § 50.10, 38 F.R. 29588 (Oct. 26, 1973), 38 F.R. 5181 (Feb. 11, 1974) 15

Calif. Dept. of Corrections Manual § 415.071 ..... *passim*

OTHER AUTHORITIES:

H. Mattick, The Prosaic Sources of Prison Violence (1972) 32

National Council on Crime and Delinquency, Model Act for the Protection of Rights of Prisoners, § 7 ... 40-41

Report of the New York State Special Commission on Attica (1972) 32, 36-37

N. Y. Times, Mar. 21, 1973, p. 19 17

R. Procunier, Testimony in *Washington Post Co.* v. *Kleindienst*, No. 72-1362 (D.C. Cir. Feb. 21, 1974), *aff'g* 357 F. Supp. 770 (D.D.C.), *stay granted*, 406 U.S. 912, *remanded*, 477 F.2d 1168 (D.C. Cir.), *on remand*, 357 F. Supp. 779 (D.D.C. 1972), *pet'n for cert. filed* (No. 73-1265, Feb. 15, 1974) 35-36

Sigler, M. H., "A New Partnership in Corrections", address before the 102d Congress of the American Correctional Association (Aug. 21, 1972) 42

Theoretical Studies in Social Organization of the Prison (Social Science Research Council, N. Y. 1960) ... 32

Washington Post, Aug. 9, 1970 12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-918

EVE PELL, *et al., Appellants*

v.

RAYMOND K. PROCUNIER, Director, California Department of Corrections, *et al., Appellees.*

On Appeal from the United States District Court for the Northern District of California

---

BRIEF OF THE WASHINGTON POST COMPANY, THE MIAMI HERALD PUBLISHING COMPANY, THE MINNEAPOLIS STAR AND TRIBUNE COMPANY, NEW YORK NEWS, INC., AND THE TIMES MIRROR COMPANY, AMICI CURIAE, IN SUPPORT OF REVERSAL

The Washington Post Company, The Miami Herald Publishing Company, a division of Knight Newspapers, Inc., The Minneapolis Star and Tribune Company,

New York News, Inc., and The Times Mirror Company submit this brief as *amici curiae* in support of appellants' appeal from the judgment of the United States District Court for the Northern District of California entered on August 16, 1973. The parties to this action have given their written consent to the filing of this brief pursuant to Rule 42(1) of the Rules of this Court. Copies of the letters of consent are being filed with the Clerk and are appended to this brief.

OPINION BELOW

The opinion of the United States District Court for the Northern District of California is reported as *Hillery* v. *Procunier,* 364 F. Supp. 196 (N.D. Cal. 1973) (3-judge court).

JURISDICTION

The order of the district court was entered on August 16, 1973. This Court noted probable jurisdiction on January 21, 1974. The Court has jurisdiction under 28 U.S.C. § 1253.

CONSTITUTIONAL AND REGULATORY PROVISIONS INVOLVED

The First Amendment to the Constitution of the United States provides in pertinent part:

> "Congress shall make no law . . . abridging the freedom of speech or of the press . . . ."

California Department of Corrections Manual § 415.071 provides:

> "Press and other media interviews with specific individual inmates will not be permitted."

QUESTION PRESENTED

Whether, under the First Amendment, a state may prohibit all interviews between any member of the press and any prison inmate designated in advance, at all its penal institutions, under all circumstances, and at all times.

INTEREST OF THE AMICI

The Washington Post Company publishes *The Washington Post,* a daily newspaper of general circulation. It is the parent of subsidiary corporations that operate radio and television stations. Through another subsidiary it also publishes *Newsweek,* a nationally and internationally distributed news magazine. The Washington Post Company is also a party in *Saxbe* v. *Washington Post Co.,* No. 73-1265, *cert. granted* (Mar. 4, 1974), which presents a question similar to that in the instant case. The instant brief was prepared prior to the granting of certiorari.

The Miami Herald Publishing Company, a division of Knight Newspapers, Inc., publishes *The Miami Herald,* a daily newspaper of general circulation.

The Minneapolis Star and Tribune Company publishes *The Minneapolis Tribune,* a daily newspaper of general circulation.

New York News, Inc. publishes *Daily News* and *Sunday News,* New York City, which have the largest daily and Sunday newspaper circulation in the United States.

The Times Mirror Company publishes *The Los Angeles Times,* a daily newspaper of general circulation.

STATEMENT

Appellants Eve Pell, Betty Segal and Paul Jacobs are, respectively, a freelance journalist, a newspaper reporter, and a television reporter. Appellees Raymond K. Procunier, Louis S. Nelson, James W. L. Park, and Joseph R. O'Brien, are, respectively, Director of the California Department of Corrections, Warden of the California State Prison at San Quentin, Associate Warden at San Quentin, and Public Information Officer at San Quentin. Each appellant requested an interview with an inmate at San Quentin State Prison in California. These inmates are appellees in No. 73-754, *Procunier* v. *Hillery*.[1] Appellees denied these requests pursuant to § 415.071 of the California Department of Corrections Manual, which flatly prohibits any interview between any member of the press and any "specific individual inmate" at any California penal institution under any circumstances at any time. California penal institutions house approxmately 20,000 inmates.

California policy does permit newsmen to enter prisons and interview randomly-selected inmates. However, it does not appear that there is any policy permitting such interviews to be outside the hearing of prison officials and other inmates, unrestricted as to subject matter, and in-depth. Apparently such aspects of random interviews are determined by *ad hoc* exercise of discretion. See Joint Appendix 242-44. More-

---

[1] Appellants in the instant case appeal from the decision below that they, as newsmen, have no First Amendment right to interview inmates willing to be interviewed. Appellants in No. 73-754 appeal from the decision by the same court in the same case that inmates have a First Amendment right to be interviewed by newsmen willing to interview them.

over, because of § 415.071, a newsman who needs to interview a particular inmate about a particular subject matter is prohibited from doing so. News stories that depend on such interviews cannot be written.

The 3-judge district court, citing no decision of this Court other than *Branzburg* v. *Hayes*, 408 U.S. 665 (1972); *Zemel* v. *Rusk*, 381 U.S. 1 (1965); and *Sheppard* v. *Maxwell*, 384 U.S. 333 (1966), held that newsmen have no First Amendment right to gather news by interviewing inmates. Without considering whether *any* state interest supports § 415.071, the court upheld it in its full breadth as to newsmen. The court went on to hold that § 415.071 unconstitutionally denies *inmates* their First Amendment right to be interviewed, that it is not supported by any compelling state interest, and that it is overbroad.

SUMMARY OF ARGUMENT

The First Amendment protects the public's right to be informed by the press about matters of public interest, including prisons. On many occasions this Court has recognized the fundamental importance of an informed public and the special role of the press under the First Amendment as informer of the public. Because prisons are important public institutions, the public's interest in being informed about them is at least as strong as its interest in being informed about other governmental matters. Because prisons are not freely open to the public, the informing function of the press is particularly important as to them. There is no other source of public information concerning prisons which can substitute for press reports. Because of restraints on press coverage of prisons, prisoner lawsuits have become a major force for prison

reform. This case presents an important opportunity for this Court to help activate the *political* process on issues of penal reform by enabling the press to report effectively to the public.

The right of the press to gather news is an indispensable element of the public's First Amendment right to be informed about matters of public interest. This general principle was recognized in *Branzburg* v. *Hayes,* 408 U.S. 665 (1972), but the decision in the instant case cannot be made by reference to *Branzburg,* but only by weighing the competing press and state interests.

Section 415.071 directly and severely restricts news gathering by denying the press the use of a critical news gathering method. All that is claimed by the press in this case is a right of a newsman to associate with a willing prisoner in a private in-depth interview for purposes of news gathering, subject to reasonable prison regulations as to time, place and manner. This is the same right that is enjoyed by relatives, friends, lawyers, clergymen, public officials and others who visit newsmen. Accordingly, this case can be decided very narrowly.

The opportunity for private in-depth face-to-face interviews is critical for accurate and effective news gathering. Such interviews are significantly superior to all alternative methods of news gathering because they are flexible in format, permit an evaluation of demeanor, allow pursuit of topics, do not involve the kind of delays associated with mail, and can be used to communicate with illiterate inmates. Letters, casual conversations, group interviews, interviews with randomly selected inmates, and statements from prison

officials do not obviate the critical need for private uncensored in-depth face-to-face interviews with individual inmates designated in advance.

No compelling governmental interest supports § 415.071's total ban on all press interviews with prisoners designated in advance.

Press interviews do not create undue administrative burdens. Jurisdictions that permit press interviews have not experienced such burdens. The number of press interviews likely to occur in any jurisdiction is insignificant when compared to the number of other interviews regularly permitted. Any undue burden from press interviews can be eliminated by reasonable, non-discriminatory regulations.

Newsmen are no more likely to endanger prison security than are relatives, friends, lawyers, clergymen, and others who visit prisoners. The same security precautions that are applied to other persons entering prisons for visits can effectively be applied to newsmen.

The "big wheel" theory cannot justify a total ban on all press interviews with all prisoners designated in advance, regardless of whether the inmates are actual or potential big wheels. The big wheel theory has no precise meaning. The reason for its focus on interviews with designated inmates, to the exclusion of all other ways that inmates gain status, is unclear. A narrowly and precisely drawn regulation can protect whatever state interests are genuinely reflected in the big wheel theory, while generally permitting press interviews with the vast majority of inmates.

A policy generally permitting press interviews with inmates would not significantly disturb any state inter-

est in uniformity of treatment of inmates. Director Procunier himself would reject a uniform policy on press interviews on penological grounds. He adopted the present uniform prohibition only because of legal advice.

The record contains no substantial evidence showing that press interviews with inmates will impede rehabilitation.

Property law concepts are not controlling in this case. A state may not invoke property concepts to justify sealing off thousands of persons from press and public scrutiny. Since newsmen seek to use prison property only in the same way that inmates' relatives, friends, lawyers, clergymen and other visitors use it, they cannot be regarded as trespassers. In the circumstances of this case, First Amendment rights outweigh any countervailing claims of property.

A large majority of American jurisdictions for which information is available permit newsmen to interview prison inmates in some circumstances. Nearly half have policies generally permitting such interviews. The experience of these jurisdictions demonstrates that press interviews do not interfere with the achievement of correctional goals.

Appellee has failed to present any solid reason which in logic or experience supports § 415.071's total prohibition of interviews between newsmen and inmates designated in advance.

A prisoners' right to be interviewed is no substitute for a press right to interview. Prisoners may not be able or willing to initiate and pursue a request to be interviewed in the face of opposition from prison

officials. The press is in a better practical position to assert and protect the right to an interview. The interest of the press and public in having interviews with prisoners is different from that of the prisoner in being interviewed. These interests rest on different foundations in First Amendment law.

Press interviews with inmates should be permitted except where serious administrative or disciplinary problems will directly and immediately result. An interview may be denied only on the basis of an inmate's past behavior or conditions at the prison. This rule gives adequate guidance and yet leaves ample scope for the exercise of discretion by prison officials.

ARGUMENT

I. THE FIRST AMENDMENT PROTECTS THE PUBLIC'S RIGHT TO BE INFORMED BY THE PRESS ABOUT MATTERS OF PUBLIC INTEREST, INCLUDING PRISONS.

On many occasions this Court has emphasized that the overriding subject of First Amendment protection is the public's right to receive information and opinions concerning matters of public interest. In *Garrison* v. *Louisiana*, 379 U.S. 64, 76 (1964), the Court, per Mr. Justice Brennan, upheld "the paramount public interest in a free flow of information to the people concerning public officials, their servants." In *Associated Press* v. *United States*, 326 U.S. 1, 20 (1945), it observed that "the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public." In *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, 390 (1969), the Court, per Mr. Justice White, characterized the rights of television and radio audiences as "paramount. . . . . It is the right of the public to receive suitable

access to social, political, esthetic, moral and other ideas and experiences which is crucial here." In *Kleindienst* v. *Mandel*, 408 U.S. 753 (1972), the Court, per Mr. Justice Blackmun, stated: "It is now well established that the Constitution protects the right to receive information and ideas." See also *Lamont* v. *Postmaster General*, 381 U.S. 301 (1965).

The public's right to be informed is critical to its capacity to make intelligent decisions in our democratic political system. It is also indispensable to the progress of science, the arts, the economy, and social life generally. *Curtis Pub. Co.* v. *Butts*, 388 U.S. 130, 147 (1967) (plurality opinion); *Rosenbloom* v. *Metromedia, Inc.*, 403 U.S. 29, 42 (1971) (plurality opinion).

This Court has also recognized many times that the First Amendment assigned to the press a unique, constitutionally protected, role as informer of the public:

> "The Constitution specifically selected the press . . . to play an important role in the discussion of public affairs. Thus the press serves and was designed to serve as a powerful antidote to any abuses of power by government officials and as a constitutionally chosen means for keeping officials elected by the people responsible to all the people whom they were elected to serve." *Mills* v. *Alabama*, 384 U.S. 214, 219 (1966).[2]

---

[2] The unique constitutional status of those who inform the public is entirely consistent with the application to them of laws of general scope that do not impede the performance of First Amendment functions. Thus the press is properly subject to tax laws, antitrust laws, labor laws, and the like. The special constitutional status is relevant, however, whenever, as in the instant case, a statute or regulation is directly solely at the press or directly impedes its carrying out of the informing function. *See, e.g., Grosjean* v. *American Press Co.*, 297 U.S. 233 (1936).

"A broadly defined freedom of the press assures the maintenance of our political system and an open society." *Time, Inc.* v. *Hill*, 385 U.S. 374, 389 (1967). The informing function of the press was perhaps most simply and forcefully described by Mr. Justice Black in *New York Times Co.* v. *United States*, 403 U.S. 713, 717 (1971) (concurring opinion):

> "In the First Amendment the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors. The Government's power to censor the press was abolished so that the press would remain forever free to censure the Government. The press was protected so that it could bare the secrets of government and inform the people."

Although this Court has not yet had occasion to consider the application of these principles to prisons, a majority of lower federal courts have held that they apply with the same or even greater force in the prison context than in other contexts. *See Washington Post Co.* v. *Kleindienst*, No. 72-1362 (D.C. Cir. Feb. 21, 1974), *aff'g* 357 F. Supp. 770 (D.D.C.), *stay granted*, 406 U.S. 912, *remanded*, 477 F.2d 1168 (D.C. Cir.), *on remand*, 357 F. Supp. 779 (D.D.C. 1972), *cert. granted* (No. 73-1265, Mar. 4, 1974); *Burnham* v. *Oswald*, 342 F.Supp. 880 (W.D.N.Y. 1972); *Houston Chronicle Pub. Co.* v. *Kleindienst*, 364 F. Supp. 719 (S.D. Tex. 1973), *app. dismissed*, No. 73-3590 (5th Cir. Jan. 11, 1974); *McMillan* v. *Carlson*, C.A. No. 72-2551-M (D. Mass. Dec. 31, 1973); *Globe Newspaper Co.* v. *Saxbe*, Civ. No. 73-3748G (D. Mass. Feb. 12, 1974); see also *Nolan* v. *Fitzpatrick*, 451 F.2d 545 (1st Cir. 1971);

Palmigiano v. *Travisono*, 317 F. Supp. 776 (D.R.I. 1970).[3]

Prisons, like other public institutions, are the responsibility of elected public officials. As a critical part of the total system of criminal law adminstration, they directly affect the quality of life throughout society. Accordingly, the public's interest in being informed about prisons is at least as strong as its interest in being informed about other governmental matters. Without adequate information, the public cannot intelligently vote and make its policy preferences known. Because members of the public cannot freely enter prisons and inform themselves of conditions there, the public depends on the press for its information about prisons. As the district court pointed out in *Washington Post Co.* v. *Kleindienst, supra*, 557 F. Supp. at 773:

> "Whenever people are incarcerated, . . . opportunity for human indignities and administrative insensitivity exists. Those thus deprived of freedom live out of the public's view. It is largely only through the media that a failure in a particular institution to adhere to minimum standards of human dignity can be exposed. Indeed, needed reforms in these areas have often been sparked by press attention."[4]

---

[3] *Contra*, *Seattle-Tacoma Newspaper Guild* v. *Parker*, 480 F.2d 1062 (9th Cir. 1973); *Mitford* v. *Pickett*, 363 F. Supp. 975 (E.D. Ill. 1973); *Smith* v. *Bounds*, Civ. No. 2914 (E.D.N.C. Mar. 14, 1972), *aff'd*, No. 73-1658 (4th Cir. June 8, 1973); see also *Seale* v. *Manson*, 326 F. Supp. 1375 (D. Conn. 1971).

[4] The public need for greater information about prisons for purposes of prison reform was underscored in a speech by Mr. Chief Justice Burger urging lawyers to "get in the habit of visiting prisons". Lay sermon at ABA interdenominational prayer breakfast in St. Louis, Mo., August 9, 1970. *The Washington Post*, Aug. 10, 1970.

In *Burnham* v. *Oswald, supra,* the court pointed out:

> "It is true that an inmate has a right to correspond with the court, with his attorney, with his family and with a few friends. Infrequently a private citizen may have an opportunity to visit and chat with him briefly. Members of the legislature have a right to visit and talk to inmates but, because of the press of many other duties, these visits are not often made. It is apparent that these limited avenues of communication are not good enough to bring to public attention a complete and accurate picture of prison life. The decision about what information may pass through prison walls must not be left to the administrators alone . . . . Access by the news media to the inside of prisons is the most effective way to give meaning to the rule that an inmate has the right to communicate and to the rule that the public has a right to know what goes on within prison walls." 342 F. Supp. at 885-86.

Finally, it is sometimes suggested that press interviews with inmates are unnecessary because inmates can take their grievances to court. Indeed, in recent years prisoners in increasing numbers have brought civil suits in federal courts to challenge the conditions in which they are held and the treatment they receive. See, *e.g., Holt* v. *Sarver,* 442 F.2d 304 (8th Cir. 1971); *Roberts* v. *Williams,* 456 F.2d 819 (5th Cir.), cert. denied *sub nom. Roberts* v. *Smith,* 404 U.S. 866 (1971); *Landman* v. *Royster,* 333 F. Supp. 621 (E.D. Va. 1971). However, courts ought not to be the principal vehicle for publicizing grievances against public officials or the principle reformers of social institutons. Under our constitutional scheme of government, the free press should be able to report grievances to the public so that *an informed public* can make its weight felt within

the *political* branches. This democratic process has not been at work in the prison context because prison officials customarily have denied the press an opportunity to present to the public a full picture of prison life, including the views of inmates obtained through in-depth interviews. Only when prison authorities remove the dam they have erected to stop the free flow of information to the public, will the tides of prisoner grievances be channeled away from the courts, and perhaps from outbreaks of violence, and into the political process where they belong. Thus, this case presents an important opportunity for this Court to help activate the political process on issues of penal reform by removing an artificial and arbitrary barrier to an informed citizenry. In so doing, the Court will be performing its traditional constitutional function. See, *e.g., Stromberg* v. *California,* 283 U.S. 359, 369 (1931); *Grosjean* v. *American Press Co.,* 297 U.S. 233, 249-50 (1936); *De Jong* v. *Oregon,* 299 U.S. 353, 364-65 (1937). For too long the courts have borne the principal burden of penal reform. The time has come to allow the press to bring information about penal conditions into the forum of public opinion.

II. THE RIGHT OF THE PRESS TO GATHER NEWS IS AN INDISPENSABLE ELEMENT OF THE PUBLIC'S FIRST AMENDMENT RIGHT TO BE INFORMED ABOUT MATTERS OF PUBLIC INTEREST.

A free press is an essential element of a democracy precisely because the individual members of the public cannot themselves, as a practical matter, gather all the information needed to exercise their political and other responsibilities. This Court's decisions on the informing function, discussed at pp. 9-11, *supra,* all recognize that the press is the agent or proxy of the public,

created to do what the public cannot do for itself. Precisely in situations (*e.g.*, prisons) where the public must for good reasons be denied unrestricted access, the press should be permitted reasonable access (absent compelling reasons to the contrary). Surely it would be ironic to deny the public access to information by means of the press on the ground that the press should have no greater rights than the general public. Indeed, if the government could, without fear of scrutiny under the First Amendment, restrict the right of the press to obtain information from sources, visit places, and observe events, the right to publish would be of little significance.[5]

It is for these reasons that this Court in *Branzburg* v. *Hayes*, 408 U.S. 665 (1972), expressly recognized that news gathering is part of the freedom of the press protected by the First Amendment:

> "Nor is it suggested that news gathering does not qualify for First Amendment protection; without some protection for seeking out the news, freedom of the press could be eviscerated. . . . [N]ews gathering is not without its First Amendment protections." 408 U.S., at 681, 707.[6]

---

[5] Regulations of the United States Department of Justice relating to subpoenas to newsmen begin with the premise that "freedom of the press can be no broader than the freedom of reporters to investigate and report the news." 28 CFR § 50.10, 38 F.R. 29588 (Oct. 26, 1973). Similarly, President Nixon has determined that newsmen shall have continued access to American military bases abroad "on a regular basis." 39 F.R. 5181 (Feb. 11, 1974).

[6] Other cases recognizing that news gathering is protected by the First Amendment are *Schnell* v. *Chicago*, 407 F.2d 1084 (7th Cir. 1969); *Dietemann* v. *Time, Inc.*, 449 F.2d 245, 249 (9th Cir. 1971); *Associated Press* v. *KVOS*, 80 F.2d 575, 581 (9th Cir. 1935), rev'd on jurisdictional grounds, 299 U.S. 269 (1936); *Chan-*

Of course, the Court in *Branzburg* went on to hold that in the particular circumstances of the grand jury subpoenas before it, the First Amendment protection of news gathering did not extend so far as to entitle the reporters to maintain the confidentiality of their sources. The rationale of the decision was that, in the circumstances presented, denial of a reporter's privilege of confidentiality with respect to a proper grand jury subpoena would not itself prevent a reporter from interviewing any source he desired, 408 U.S., at 681-82, and that the record failed to show that denial of the privilege would severely constrict the flow of information to the public, 408 U.S., at 690-94.

The decision in *Branzburg* turned on the weighing of the social cost of a clear and definite obstacle to a grand jury investigation against the cost of what the Court found to be an uncertain and speculative injury to the capacity of the press to gather news. The particular balance struck in *Branzburg* has no bearing on the analysis required in the instant case: the weighing of the social cost of a clear and definite obstacle to news gathering against what the court below (in the context of the prisoners' claim) found to be an uncertain and speculative injury to prison administration.

The relevance of *Branzburg* to the instant case lies in its holding that news gathering is entitled to First Amendment protection, and indeed to the protection of the normal First Amendment test requiring that regulations infringing upon First Amendment interests be narrowly and precisely drawn so as to serve only a

nel 10, Inc. v. *Gunnarson*, 337 F. Supp. 634 (D. Minn. 1972). See also the cases cited in the text at pp. 11-12, *supra*, and the cases cited in n. 7, *infra*.

compelling state interest by the means least restrictive of First Amendment interests. 408 U.S., at 700.[7] See also *NAACP* v. *Button*, 371 U.S. 415, 439 (1963); *Thomas* v. *Collins*, 323 U.S. 516, 530 (1945); *DeGregory* v. *Attorney General of New Hampshire*, 383 U.S. 825, 829 (1966); *Bates* v. *Little Rock*, 361 U.S. 516, 524 (1960); *Schneider* v. *State*, 308 U.S. 147, 161 (1939); *NAACP* v. *Alabama*, 357 U.S. 449, 464 (1958). When prison regulations infringe upon First Amendment interests, they have no special exemption from the compelling interest test, although of course the special characteristics of prisons are given due weight in applying the test. See, *e.g.*, *Nolan* v. *Fitzpatrick*, 451 F.2d 545, 548 (1st Cir. 1971); *Washington Post Co.* v. *Kleindienst*, No. 72-1362 (D.C. Cir. Feb. 21, 1974); *Fortune Society* v. *McGinnis*, 319 F. Supp. 901, 904 (S.D.N.Y. 1970); *Carothers* v. *Follette*, 314 F. Supp. 1014 (S.D.N.Y. 1970).

The decision in the instant case must, therefore, turn on a consideration of the nature and severity of § 415.071's restriction on news gathering and of the nature and strength of California's interest in imposing a restraint as broad as that of § 415.071.

---

[7] In post-*Branzburg* cases involving assertion of a newsman's privilege of confidentiality, the lower federal courts have recognized that news gathering is protected by the normal First Amendment test, and have weighed the competing interests on the particular records before them. See *Baker* v. *F&F Investment*, 470 F.2d 778 (2d Cir. 1972), cert. denied, 411 U.S. 966 (1973); *Cervantes* v. *Time, Inc.*, 464 F.2d 986 (8th Cir. 1972); *Bursey* v. *United States*, 466 F.2d 1059, 1090-92 (9th Cir. 1972); *Democratic National Committee* v. *McCord, In re Bernstein*, 356 F. Supp. 1394 (D.D.C. 1973); *Linsey* v. *Kelman* (D. Conn., Mar. 20, 1973) (N.Y. Times, Mar. 21, 1973, p. 19); see also *Carey* v. *Hume*, No. 71-1736 (D.C. Cir. Jan. 28, 1974); *United States* v. *Liddy, In re Times Mirror Co.*, 354 F. Supp. 208 (D.D.C. 1973).

III. SECTION 415.071 DIRECTLY AND SEVERELY RESTRICTS NEWS GATHERING BY DENYING THE PRESS THE USE OF A CRITICAL NEWS GATHERING METHOD.

Section 415.071 flatly and totally prohibits newsmen from interviewing any of California's 20,000 prison inmates designated in advance for the purpose of gathering news from them. The prohibition of interviews is an assertion of state power to prevent two willing persons—the journalist/interviewer and the prisoner/interviewee—from associating for the purpose of an interview, a constitutionally protected activity. *Cf. Shelley* v. *Kraemer,* 334 U.S. 1 (1948).

The assertion of this power in § 415.071 is virtually unique since only as to persons within its physical control does a state have effective power to prevent interviews from taking place. And persons within the physical control of the state are limited to those incarcerated or housed in state institutions.

Accordingly, the First Amendment claim in this case is extremely narrow: a claim that two people who want to talk to one another for the purpose of news gathering without being overheard have a right to do so; and that the fact that one of them is a prison inmate does not negate the right, but merely means that the interview may be subjected to reasonable prison regulations as to time, place, and manner.

It should be emphasized what this case does not involve. It does not involve any claim of press access to any person who does not wish to be interviewed, and thus it does not raise any question of an invasion of privacy. Contrast *Commonwealth* v. *Wiseman,* 249 N.E. 2d 610 (Mass.), cert. denied, 399 U.S. 960 (1970) ("Titticut Follies"). It does not involve any claim of

access to any government officials, government meetings or government documents. Contrast *New York Times Co.* v. *United States,* 403 U.S. 713 (1971). It does not involve any interference with the conduct of a trial. Contrast *Estes* v. *Texas,* 381 U.S. 532, 539-40 (1965). It does not involve a claim of access to areas where exclusion of the public is required by "the weightiest considerations of national security." Contrast *Zemel* v. *Rusk,* 381 U.S. 1, 16 (1965). Nor does it involve any claim of a privilege to withhold information from an official body such as a court or grand jury. Contrast *Branzburg* v. *Hayes,* 408 U.S. 665 (1972).

Further, there is no claim in this case of a First Amendment right to enter prisons at all times and under all circumstances. It is undisputed that the special nature of prisons justifies the establishment of reasonable regulations governing the times, places and manner in which interviews with prisoners may take place. And this case presents no question as to the power of prison authorities to prohibit interviews during riots or other institutional emergencies.

What the newsmen in this case do claim is the same right to interview inmates that is enjoyed by relatives, friends, lawyers, clergymen, public officials, and other persons who commonly are permitted to have private conversations in depth with inmates. If all these categories of persons are permitted to interview inmates during normal times and subject to reasonable regulations, there is no justification for excluding the press.

The question presented in this case can be decided very narrowly, without any necessity to lay down even the general outline of the First Amendment right to

gather news. All that the Court need decide is that where a state permits a broad segment of the public to have private interviews with competent persons within its custody subject to reasonable regulations as to time, place and manner, the state may not exclude the press from interviewing such persons who give their consent, subject to the same regulations, except upon a showing of a compelling interest for such exclusion, and that the ordinary circumstances of a prison do not create such a compelling interest.[8]

The gist of the First Amendment claim in this case is the critical need for personal interviews with willing prisoners in order to gather news about prisons effectively, accurately and reliably. That need was recog-

---

[8] In *Branzburg*, the Court observed: "Despite the fact that news gathering may be hampered, the press is regularly excluded from grand jury proceedings, our own conferences, the meetings of other official bodies gathered in executive session, and the meetings of private organizations. Newsmen have no constitutional right of access to the scenes of crime or disaster when the general public is excluded, and they may be prohibited from attending or publishing information about trials if such restrictions are necessary to assure a defendant a fair trial before an impartial tribunal." 408 U.S., at 684-85. Although *amici* do not regard that dictum as fully reflecting the applicable law, they emphasize that the press claim in the instant case is fully consistent with it. As the district court in *Washington Post Co.* v. *Kleindienst*, *supra*, 357 F. Supp., at 772, pointed out: "There is, of course, an absolute right of privacy which the press cannot invade. An individual may refuse to be interviewed. Those who wish to consult or meet in private for the day-to-day conduct of public or business affairs may, in furtherance of their own common right to privacy, exclude the media. These commonly accepted situations are, however, obviously quite distinct from the special circumstances presented by this particular controversy. Here the [United States Bureau of Prisons] has not denied the press access to its own personnel. Rather, it has imposed a ban on persons placed in its care by the courts who may wish to talk with the press and are willing to be interviewed."

nized in *Washington Post Co.* v. *Kleindienst,* No. 72-1362 (D.C. Cir. Feb. 21, 1974), where the court held unconstitutional a federal policy imposing a total ban on press-inmate interviews essentially indistinguishable from California's. The federal policy permitted newsmen to visit prisons, to engage in casual conversations about prison problems with inmates randomly encountered on such visits, to interview randomly selected groups of prisoners, and to correspond with individual prisoners; but prohibited face-to-face in-depth private interviews between a newsman and a willing individual inmate designated in advance. The trial court had heard testimony from numerous witnesses (journalists, deans of journalism schools, a sociologist of prisons, and others) concerning the need for personal interviews of inmates for a full understaning of events and conditions in prisons. On the basis of this evidence, the trial court stated:

> "The Court has determined on the basis of detailed factual findings filed herewith that private personal interviews are essential to accurate and effective reporting. Ethical newspapers rarely publish articles based on unconfirmed letter communications. Reliability of such information must be determined by face-to-face confrontation. This is universally recognized by experienced journalists and demonstrated by the results of many confidential interviews conducted during the recent Attica investigation. Testimony of Liman and Fisher and the Attica Report itself are particularly persuastive on this key issue." 357 F. Supp., at 781.[9]

[9] "Fisher" is Roy M. Fisher, Dean of the University of Missouri School of Journalism. "Liman" is Arthur L. Liman, General Counsel to the New York State Special Commission on Attica, which conducted the official inquiry into the Attica riots of 1971.

The D.C. Circuit affirmed this holding, *Washington Post Co.* v. *Kleindienst, supra,* at 10-13.

The findings that supported this conclusion included the following:

> "The opportunity for face-to-face interviews with news sources is critical when the credibility and reliability of the source is unknown to the newsman. . . . A private interview with an inmate having a particularized grievance permits the newsman to 'study the demeanor of the man, pursue questions at once, watch reactions, [and] confront him with things that seem to be internally inconsistent. . . . None of these opportunities exists as a practical matter in the alternative sources of information available to newsmen under the current [federal] Policy Statement. . . . The opportunity for a face-to-face interview is as important to a newsman gathering news as it is to an attorney developing his case, . . . or a police detective investigating a crime. . . . Face-to-face interviews with news sources play such a fundamental role in the news-gathering process that the development of interviewing techniques is a central feature of the curricula of the nation's most prestigious journalism schools.
>
> "The plaintiffs placed in evidence a study published by Journalism Quarterly which analyzed the reasons for inaccuracies in news stories. . . . A major conclusion of that study is that 'lack of contact between the newsman and a news source increases the chance that serious subjective errors will be perceived as occurring or will occur.' . . .
>
> "The report of the New York State Special Commission on Attica . . . was based principally on some 3,000 interviews, 1,600 of them with inmates at that penal institution. . . . It was the most comprehensive program of face-to-face interviews ever undertaken by persons other than prison author-

ities at a prison. The General Counsel to the Commission recited to the Court an extensive catalog of significant information obtained through interviews with inmates that could not have been obtained in any other manner. . . . The Commission's experience was that confidential interviews with individual inmates were indispensable for the gathering of reliable information about conditions in prison, prisoners grievances and events in which inmates participate.

"A sociologist with extensive experience in prison administration testified that he could obtain an understanding of a penal institution only if he had the opportunity to conduct face-to-face interviews with inmates and prison officials." Finding 25.[10]

With respect to the alternatives to interviews permitted by the federal prison policy, the court made the following findings based on extensive evidence:

"The essential defect in limiting contact between newsmen and particular inmates with grievances or complaints to an exchange of correspondence . . . is that the newsman has no opportunity to confront those inmates and evaluate the credibility of the information they wish to convey. . . . The need for face-to-face confrontation can be of particular importance in the prison context because the inmate who complains by letter may be unknown to the news media and there would be no independent basis for evaluating his credibility and reliability. . . . Newsman-inmate communication by correspondence has other serious defects. It can cause delays in developing current information about events or prison conditions. More-

[10] The complete findings of fact and conclusions of law as adopted by the district court, see 357 F. Supp., at 784, are reprinted in Petition for a Writ of Certiorari, pp. 46-72, *Saxbe* v. *Washington Post Co.*, No. 73-1265 (1974).

over, an exchange of correspondence does not permit a newsman to pursue a line of questioning in depth or to ask follow-up questions on the basis of a particular response. . . . To the extent that newsmen cannot obtain the views of inmates who are not fully literate, an important source of information is likely to be lost. . . . The loss would not be mitigated by the opportunity for some inmates to write letters on behalf of others. . . .

"The opportunity offered newsmen to tour federal prisons and to engage in casual conversations with inmates encountered during the tour is not an adequate substitute for private, individual, in-depth interviews. Those conversations are limited in terms of their duration, . . . and content, . . .; newsmen cannot identify in their stories the inmates with whom they had conversations, . . .; and the conversations may be overheard by prison officials. . . . In addition, because the newsman cannot designate in advance the inmates with whom he will converse, the opportunity for casual conversations gives him no access to inmates who are known to have particularized complaints or other particularized information. . . .

"The willingness of federal prison officials to provide the news media with information about events and conditions is no substitute for private, individual interviews with inmates. Particularly when a newsman is seeking information relating to inmate complaints about the actions of prison officials or employees, newsmen who testified stated that their experiences made them skeptical that those officials or employees will provide them with objective and balanced information. . . . That this skepticism is warranted is shown, for example, by the fact that public officials deliberately gave false information to the news media concerning how the hostages died during the Attica prison revolt in September 1971.

"Plaintiff [Ben] Bagdikian [a newsman] was given an opportunity at the federal prisons at Lewisburg and Danbury to interview several inmates selected at random from the prison population in a group and out of the hearing of prison officials or employees. . . . The group interview conducted by Mr. Bagdikian at Lewisburg proved 'very unproductive,' . . . because the particular inmates he traveled to Lewisburg to interview were not part of the group and because the inmates who participated admitted they could not speak with candor out of fear that what they said would be reported to prison officials by other inmates and result in reprisals. . . . The evidence before the Court also shows that group interviews in the prison context are unsatisfactory because, when interviewed in groups, inmates tend to make speeches for the benefit of other inmates rather than relate facts. Indeed, the New York State Special Commission on Attica found that inmates interviewed in a group were far more critical of prison authorities than when they were interviewed in private." Finding 24.

Many of the themes reflected in these detailed findings concerning the press interest in having individual private interviews with inmates have been emphasized by this Court in other contexts.

In *Kleindienst* v. *Mandel,* 408 U.S. 753 (1972), the Government had refused entry into this country to Mandel, an alien professor who had planned to lecture at various American universities. Mandel and several of his intended listeners challenged the denial of a visa to him under the First Amendment. The Government argued that Mandel's exclusion involved no restraint on the First Amendment rights of citizens to receive information because alternative forms of communica-

tion existed. The Court, per Mr. Justice Blackmun, rejected that contention:

> "The Government also suggests that the First Amendment is inapplicable because appellees have free access to Mandel's ideas through his books and speeches; and because 'technological developments' such as tapes or telephone hook-ups readily supplant his physical presence. This argument overlooks what may be particular qualities inherent in sustained, face-to-face debate, discussion, and questioning. . . . [We] are loathe to hold on this record that existence of other alternatives extinguishes altogether any constitutional interest on the part of appellees in this particular form of access." 408 U.S. at 765.[11]

Prior statements of this Court also support the conclusion that, for purposes of news gathering, letters are no substitute for interviews. However prompt a prison mail service may be, mail is in most cases inherently too slow to permit adequate and timely coverage of fast-breaking news events. This Court has recognized that the interest in publication of news in a *timely* fashion is constitutionally protected. See *New York Times Co.* v. *United States,* 403 U.S. 942 (1971) (granting of certiorari and stay of mandate, and order for greatly expedited hearing in this Court); *Curtis Pub. Co.* v. *Butts,* 388 U.S. 130, 157 (1967) (opinion of Harlan, J., joined by Clark, Stewart & Fortas, J.J.) (suggested distinction between "hot news" and other news). Moreover, this Court has recognized that prison inmates are not apt to be experienced letter

[11] The Court nevertheless upheld the exclusion on the ground that the Government's plenary power to exclude aliens barred courts from looking behind a decision to exclude or weighing it against First Amendment claims.

writers. "Jails and penitentiaries include among their inmates a high percentage of persons who are totally or functionally illiterate, whose educational attainments are slight, and whose intelligence is limited." *Johnson* v. *Avery*, 393 U.S. 483, 487 (1969). See also *Goldberg* v. *Kelly*, 397 U.S. 254, 269 (1970), where the Court pointed out the inadequacy of relying on written statement by welfare recipients:

> "Written submissions are an unrealistic option for most recipients, who lack the educational attainment necessary to write effectively and who cannot obtain professional assistance. Moreover, written submissions do not afford the flexibility of oral presentations. . . . Particularly where credibility and veracity are at issue, . . . written submissions are a wholly unsatisfactory basis for decision."

In sum, California's prohibition of press interviews with prisoners is a direct and severe restriction on the capacity of the press to gather news and inform the public about prisons.

IV. NO COMPELLING GOVERNMENTAL INTEREST SUPPORTS § 415.071'S TOTAL BAN ON ALL PRESS INTERVIEWS WITH PRISONERS DESIGNATED IN ADVANCE.

The principal arguments advanced in support of § 415.071's total ban on all press interviews with prisoners are that such interviews unduly burden prison administration and that they create security problems in prisons. Neither argument withstands analysis. Nor do subsidiary arguments that press interviews will subvert a policy of treating prisoners uniformly, that they will impede rehabilitation, and that prison authorities may prevent newsmen from "trespassing" on "their" property.

A. ADMINISTRATIVE BURDENS

In *Washington Post Co.* v. *Kleindienst,* No. 72-1362 (D.C. Cir. Feb. 21, 1974), the district court had heard testimony from officials of the prison systems in California, Massachusetts, Illinois,[12] Iowa, Florida, New York City, Cook County, Illinois,[12] the District of Columbia, and the federal prison system. Among the witnesses was Director Procunier, appellee in the instant case. On the basis of this extensive record, the district court had made the following finding concerning the administrative burdens created by press interviews with prisoners:

> "The visiting facilities at penal institutions are frequently not used to their full capacity, and thus are available for press interviews with inmates. . . . Other facilities—*e.g.,* conference rooms used for attorneys' visits—are also likely to be available at many institutions. . . . Those jurisdictions which generally permit press interviews with inmates have had a relatively small number of requests for such interviews. . . . In these same jurisdictions, there has been considerable public interest in the prison system . . . . Most large penal institutions facilitate thousands of interviews per year between inmates and their friends, relatives, and counsel. . . . The number of press interviews likely to occur, and the resulting administrative burden, are insignificant in relation to the total number of interviews granted each year. . . . Press interviews with inmates do not create significantly greater administrative burdens than other visits from friends, relatives, and counsel." Finding 48.

The court of appeals affirmed this finding. *Washington Post Co.* v. *Kleindienst, supra,* at 20, n. 20.

---

[12] By deposition.

The court below also was not impressed by appellee's allegations of administrative burden. See 364 F. Supp., at 202-03. The court noted testimony that " 'hundreds' of private citizens visit California penal institutions every day. As many as 10,000 persons visit San Quentin every year, participating in events ranging from guided tours to art exhibits to bridge tournaments. Similarly, friends and relatives visit inmates regularly and inmates have virtually unlimited access to legal counsel." Against this background it can hardly be contended that the relatively few press interviews likely to occur will unduly burden California penal authorities.

Moreover, whatever undue administrative burdens there *might* be, they can be entirely eliminated, as the court below recognized, *id.*, by reasonable regulation of the frequency and duration of interviews, though of course such regulations may not discriminate against the press in comparison with other persons who visit and talk with inmates. Cf. *Police Department of Chicago* v. *Mosley*, 408 U.S. 92 (1972); *Flower* v. *United States*, 407 U.S. 197 (1972).

B. PRISON SECURITY

There is no doubt that California has a compelling interest in the security of its penal institutions. But however important prison security may be—and it is very important—it cannot be invoked to justify every restriction which may in some way protect security. Even national security may not be so relied on. In *United States* v. *Robel*, 389 U.S. 258, 263 (1967), this Court stated, "[T]he phrase 'war power' cannot be invoked as a talismanic incantation to support any exercise of congressional power which can be brought within its ambit. '[E]ven the war power does not

remove constitutional limitations safeguarding essential liberties.' *Home Bldg. & Loan Assn.* v. *Blaisdell*, 290 U.S. 398, 426 (1934)." The question presented here is not whether prison security is important, but whether, in the light of experience, press interviews pose such a significantly greater danger to prison security than do interviews with relatives, friends, lawyers, etc. that a state may completely prohibit press interviews while continuing to permit interviews with these other persons.

1. Newsmen as Risks to Prison Security

The argument that newsmen themselves jeopardize prison security was firmly rejected by the court below. 364 F.Supp., at 203. It was also rejected in *Houston Chronicle Pub. Co.* v. *Kleindienst*, 364 F.Supp. 719, 729 (S.D. Texas, 1973), where the court commented, "As for the safety of the institution, it is no more threatened by a press interview than it is by a visit from the inmate's family, friends, or lawyer." And it was rejected in *Washington Post Co.* v. *Kleindienst*, 357 F.Supp. 770 (D.D.C. 1972), on remand, 357 F.Supp. 799 (D.D.C. 1972), where the district court found:

> "Security procedures used by prison administrators to prevent the introduction of contraband by friends, relatives, attorneys and other visitors to prisoners are readily applicable to newsmen entering prisons to interview inmates, without any loss of effectiveness. . . . Members of the press are no more likely to introduce contraband than are lawyers, friends, relatives, or other visitors. . . . Members of the press are no more likely to participate in escape plans, to solicit offenses, or to make other unlawful or improper communications with inmates than are lawyers, friends, relatives, or other visitors." Finding 47.

2. The "Big Wheel" Theory

Another argument made in support of § 415.071 is that press interviews enable certain inmates to rise to the status of "big wheels" within a prison and thereby exercise a "negative" influence on other inmates. The court below considered this argument carefully, and rejected it. 364 F.Supp., at 203-04. In the *Washington Post Co.* v. *Kleindienst* litigation, both the district court and the court of appeals found that the "big wheel" phenomenon is an isolated evil, which does not justify a total prohibition of interviews with all inmates, the vast majority of whom are neither actual nor potential big wheels. See 357 F.Supp., at 781; *Washington Post Co.* v. *Kleindienst, supra,* at 14-17. As the district court stated:

> "The 'big wheel' justification did not withstand analysis. While the term is found in *Seale* v. *Manson,* 326 F.Supp. 1375 (D. Conn. 1971), it has no precise meaning. Apparently it refers to prisoners whose militancy, tendency to act out and negative influence within a prison community make it likely that sustained press interviews and attention, involving them may spark disruptive conduct by inmates within the walls. Not all prominent offenders or prison leaders fall in this category. The very few who do are usually, if not always, identifiable in advance. Interviews with such prisoners can be requested specially. The 'big wheel' justification cannot, however, be used to stifle expression by any leader in the prison community who may differ with the warden and certainly it goes too far afield to blanket all federal prisoners under this rhetoric for the obvious purpose of stultifying dissent." 357 F.Supp., at 781.

The "big wheel" theory has no precise meaning. It is not clear whether the big wheels are supposed to be

prisoners who are well known to the general public, prisoners who cause disciplinary problems, or inmate leaders. The three categories are not the same. Well-known inmates such as Nathan Leopold, Richard Speck, Sirhan Sirhan and Clifford Irving have not been trouble-makers or leaders. Conversely, inmates who violate prison rules, get into fights, and cause trouble are generally not well known to the public. Finally, the leaders of inmate social groups tend to be neither well known nor trouble-makers.[13]

The reason for the theory's focus on interviews with designated inmates is also unclear. California certainly cannot prevent the press from writing about newsworthy inmates, including those who lead strikes and riots. Such articles are received by other inmates through the mail. California does not prevent prisoners from writing letters and even, in the case of George Jackson, books. It also permits newsmen to converse with randomly selected inmates. In all these ways, some inmates may attract considerable attention and may achieve influence which can be turned to good or ill. In this context, it is difficult to understand what compelling interest requires a total prohibition of press interviews with inmates designated in advance.

To the extent that there are inmates who have positions of influence within the prison population and who use those positions for anti-social purposes, they are a small percentage of the inmate population. *Washington Post Co.* v. *Kleindienst, supra,* at 16.

---

[13] *See, eg.*, Theoretical Studies in Social Organization of the Prison, 10-11, 39-41, 43, 45-46 (1960) (Social Science Research Council, N.Y., N.Y.); H. Mattick, The Prosaic Sources of Prison Violence (1972); Report of the New York State Special Commission on Attica, 104-13 (1972).

They are also generally known to prison officials. The district court in *Washington Post* made specific findings on this point:

> "The Court finds that state and federal prison officials are able in most cases, and with no more than ordinary human error, to identify actual and potential big wheels and trouble-makers within their institutions. . . . Within the first few weeks of commitment to federal prison, all inmates within the jurisdiction of the Federal Bureau of Prisons receive a thorough evaluation, including intensive diagnostic studies . . . The results of this evaluation are available to prison administrators and are the basis for many significant decisions made with respect to the handling of inmates. In general, and with no more than ordinary human error, prison administrators and their staffs know who are the actual and potential trouble-makers within their institutions at any given time. . . . Information similar to that available to federal prison officials is the basis for the operation of Illinois' policy, which generally favors press interviews with individual inmates, but vests significant discretion in prison administrators. This policy has proved to be feasible in Illinois, and has worked satisfactorily." Findings 55, 56.

Against this background, whatever merit the "big wheel" theory may have, it cannot support a policy denying interviews with the vast majority of inmates who cannot possibly become big wheels. If in some particular cases press interviews will create a big wheel phenomenon, with consequent dangers to prison security, interviews in those cases may be denied under a regulation narrowly and precisely drawn to deal with that specific problem. See *Washington Post Co.* v. *Kleindienst, supra,* at 22-24.

C. UNIFORMITY

The claim that § 415.071 is justified as part of a policy of treating all prisoners alike is untenable. Neither California nor any other prison system seeks to treat all prisoners alike or to give them all equal privileges. The finding of the district court in *Washington Post Co.* v. *Kleindienst, supra,* with respect to the federal prison system applies with equal force to California's large and diverse system of approximately equal size:

> "The Court finds that the defendants have not shown that from a correctional point of view the Federal Bureau of Prisons has any substantial interest in having an absolutely uniform policy with respect to press interviews with inmates applicable at all institutions and to all inmates under its jurisdiction. . . . The policy of the Federal Bureau of Prisons is not to make all its institutions uniform, to have them all uniformly administered, or to treat all inmates as if they had the same correctional needs. Quite the contrary, the policy of the Federal Bureau of Prisons is to establish and maintain various types of institutions, having different correctional policies and serving different correctional needs, so that different inmates are subjected to different institutional experiences in federal correctional institutions. . . . Even among institutions where uniformity may be sought as a matter of policy, in a large number of respects it is not, and cannot be, achieved. Every prison reflects the background, personality, style and training of its chief administrator; the personal qualities of its staff; the region in which it is located; and the daily life of its inmates is affected by its particular physical plant and other resources. As these differ from one institution to another, the inmates at those institutions will inevitably experience significant differences in

their rights, privileges and opportunities. In view of these differences, any differences in the administration of a policy vesting some discretion in prison administrators over the holding of press interviews are of trivial or very minor significance." Finding 54.

Moreover, correctional officials make numerous decisions every day that result in different life experiences and status for inmates under their control. They give some inmates high status jobs within the prison; they allow some inmates to participate in special programs; they make a host of other discretionary decisions that have a material impact on the particular inmates affected.

In addition, the fact that the press would seek to interview some inmates and not others certainly would not constitute a violation of California's duty to afford equal protection to inmates. Some inmates will inevitably receive more visits from relatives and lawyers, or more letters, or more packages than do others.

Finally, that there is no validity in the argument that press interviews should be prohibited in the interest of uniformity is demonstrated by the testimony of appellee Procunier in *Washington Post Co.* v. *Kleindienst, supra.*[14] Mr. Procunier testified that California had at one time freely permitted press interviews, but that after the death of George Jackson the policy had been changed to the one reflected in § 415.071. However, despite the experience with Jackson, Mr. Procunier testified that *on penological grounds* he still prefers a

[14] The text of Mr. Procunier's entire testimony, which was introduced by appellee in the instant case, appears at pp. 277-304 of the Joint Appendix in the instant case.

flexible approach to the granting of interviews, rather than a total prohibition:

> "The best way for prisons to run, in my opinion, is to allow the warden or the man in charge of each institution, who can better assess than any director or anyone else the conditions of his institution and the kinds of inmates or the condition of the inmate at the time, the type of person that wants to interview him, for what purpose, to make a subjective evaluation of the total thing."

Mr. Procunier testified that he adopted his present policy only because "[m]y attorney suggested to me . . . that I had to make it [the prohibition] apply to everyone or I would not be allowed the prerogative [of prohibiting interviews in some circumstances]. *That is the only reason I have it across the board.*" (emphasis supplied). The district court found:

> "California . . . long had rules permitting interviews but terminated them after a recent outbreak at one prison attributed in part to many inflammatory interviews permitted a single prisoner. However, its knowledgeable, experienced Director, were it not for questionable legal advice, would still permit intervews in many sectors of his statewide correctional system." 357 F.Supp., at 774.

D. REHABILITATION

Director Procunier argued below that press interviews will interfere with prisoner rehabilitation. The court found that "little more than vague speculation" was offered to support the argument. 364 F.Supp., at 203. Moreover, the weight of correctional thinking is that increasing contacts between prisoners and the general public, including members of the press, promotes rather than retards rehabilitation. See, *e.g.*,

Report of New York State Special Commission on Attica, pp. xvi-xvii (1972).

E. PROPERTY LAW CONCEPTS

It has been argued that because prisons' physical plants are not freely open to the public, therefore they are analogous to private property, from which the press may be excluded. The short answer to this contention is that a newsman seeking to interview a particular prisoner has no particular desire to be on prison property. If interviews with inmates could be conducted elsewhere, the press would have no objection. But as the district court in *Washington Post Co.* v. *Kleindienst, supra,* pointed out, "The sources of news are solely in the prisons. No alternative satisfactory sources are available and the press claims its proper right of access." 357 F.Supp., at 783.

Moreover, prison property is public, not private, property. And it is public property that customarily is open to large segments of the public:

> "Prisons are not walled off sanctuaries like the Pentagon Map Room or the Justices' Conference table at the Supreme Court. Prisons are villages in themselves. Families, lawyers, congressmen, clergymen and friends visit in public interview, space provided. Newspapers, magazines, radio and television programs pour in incessantly throughout the day. Within the prison walls there is illness, drug distribution, prostitution and many other matters of everyday occurrence on the outside. Crimes are committed and punishments imposed during incarceration. Inmates are of varying ages, political persuasions and background. Some prisoners come and go on furlough or compassionate leave. Mail is substantially uncensored. Local communities are encouraged to

> participate in the affairs of these institutions by rendering neighborly family counseling and support. Indeed, half-way houses, vocational and educational programs, and other community ventures include prisoners serving time . . . . It is wholly inconsistent with an open democratic society to allow the state to seal off from press scrutiny thousands of men and women who have been charged with or found to have committed criminal offenses." 357 F. Supp., at 782-83.

Where a newsman seeks entry merely to talk peacefully in a private one-to-one interview with another willing person, and not to demonstrate or disrupt,[15] his right to do so should not turn on arid concepts of property law. Property concepts are particularly inapplicable in the case of interviewees held on particular property against their will. But if property concepts are relevant, newsmen entering for the purpose of interviews, are no more "trespassers" than are relatives, friends, lawyers, clergymen and others entering for the same purpose.[16] In any event, when weighing property rights against the exercise of First Amendment rights, one must "remain mindful of the fact that the latter occupy a preferred position." *Marsh* v. *Alabama*, 326 U.S. 501, 509 (1946), a "company town" case, but expressly followed in the companion case of *Tucker* v. *Texas*, 326 U.S. 517 (1946), involving federally owned real property. *See also,*

---

[15] Contrast *Adderly* v. *Florida*, 385 U.S. 39 (1966); *Cox* v. *Louisiana*, 379 U.S. 559 (1965).

[16] Thus, here as in *Amalgamated Food Employees* v. *Logan Valley Plaza*, 391 U.S. 308 (1968), the purpose of the entry onto the property in question is directly related to the normal use of the property.

e.g., Flower v. *United States,* 407 U.S. 197 (1972); *Police Department of Chicago* v. *Mosley,* 408 U.S. 92 (1972).

F. PRACTICE IN OTHER AMERICAN JURISDICTIONS

The insubstantiality of all of appellee's arguments for § 415.071 is shown by the fact that the vast majority of American jurisdictions successfully permit precisely the kind of interviews which are sought here, and which California prohibits.

In *Washington Post Co.* v. *Kleindienst, supra,* the district court received evidence concerning the then current policies in 24 state and local jurisdictions.[17] Of these, only five, together with the United States Bureau of Prisons totally prohibit press interviews with inmates (California, Connecticut, Kentucky, Virginia and Wisconsin). Eleven generally permit press interviews, while retaining discretion to deny them when special circumstances warrant (Illinois, Maine, Maryland, Nebraska, North Carolina, Ohio, Vermont, Iowa, Massachusetts, District of Columbia, New York City). Seven jurisdictions have policies that neither generally permit nor generally deny such interviews, but vest in correctional administrators discretion to permit or deny them in individual cases (Alaska, Georgia, Montana, New Jersey, Oregon, Pennsylvania, South Carolina). New Mexico has a unique policy that

---

[17] Counsel for the Washington Post Co. wrote to every state and numerous local jurisdictions requesting a copy of their policy on press interviews with inmates. All the statements of policy received were offered into evidence. The court received into evidence only those statements of policy which had previously been established in written form. Although Massachusetts had no written policy, the court heard live testimony from its Commissioner of Corrections.

does not fit into any of these categories. *See Id.*, Finding 52.

The Association of State Correctional Administrators has promulgated a guideline on relations between news media and prisons which provides for discretion in prison administrators to grant or deny interviews on an individual basis. It thus rejects the kind of total ban imposed by § 415.071. Of course, since the guideline reflects the views of prison administrators, it does not necessarily reflect an impartial or expert weighing of First Amendment interests. But it does make clear that from a correctional point of view, there is no reason to exclude the press entirely from interviews with inmates, as California does.

The National Council on Crime and Delinquency has promulgated a Model Act for the Protection of Rights of Prisoners, § 7 of which provides, *inter alia*, that "[a]ny . . . citizen may make application to visit an institution and talk in private with prisoners if the applicant establishes a legitimate reason for such visit and if the visit is not inconsistent with the public welfare and the safety and security of the institution. The director may reject any such application if the visit or any aspect thereof would be disruptive of the program of the institution." Section 7 further provides:

> "If the application for a visit is denied, the person may apply to [court of general jurisdiction] for an order directing the head of the institution to permit the visit. Such order shall be granted after notice and hearing if it is found that (a) the person is a representative of a public concern regarding the conditions of the prison, (b) he is not a mere curiosity seeker, and (c) it is not established

by the head of the institution that the visit, or any aspect of it, would disrupt the program of the institution."

This provision plainly contemplates that newsmen shall have opportunities to interview inmates privately, subject to discretion in prison administrators to prohibit interviews where necessary in the interests of protecting the functioning of the institution. The NCCD and the committee which drafted the model act plainly have concluded that the exercise of such discretion by prison administrators is feasible and consistent with correctional goals.

The fact that 18 American jurisdictions have policies which permit press interviews while giving greater or lesser scope for the exercise of discretion by prison administrators, and the fact that two organizations expert in correctional matters have proposed this type of policy rather than a total prohibition of press interviews, show that a very broad spectrum of opinion of professional correctional administrators in all parts of the United States believe that such a policy is feasible and consistent with correctional goals.[18]

G. CONCLUSION ON ASSERTED JUSTIFICATIONS FOR § 415.071

Under the pattern of analysis adopted by this Court in numerous First Amendment cases, *e.g.*, *Sherbert* v. *Verner*, 374 U.S. 398 (1963); *Talley* v. *California*, 362 U.S. 60 (1960); *Speiser* v. *Randall*, 357 U.S. 513, 528-29 (1958); *Martin* v. *Struthers*, 319 U.S. 141 (1943), a

---

[18] The foregoing discussion is based on *Washington Post Co.* v. *Kleindienst*, *supra*, Findings 57-59.

state restricting the exercise of First Amendment rights has the burden of showing that a compelling government interest makes the restriction necessary, and that the restriction is no broader than the compelling interest requires.

California has failed to sustain that burden here. It has not offered any solid reason which in logic or experience supports § 415.071's total and direct prohibition of press-inmate interviews. The arguments advanced by California have been rejected by the overwhelming majority of correctional departments throughout the country. If they can permit press interviews without disaster, so can California. In holding that California has not met its burden, this Court would not be substituting its judgment for California's. Rather, it would be concluding that, in view of correctional experience generally, the considerations marshalled by California do not rise to the level required by the First Amendment. And it would be recognizing that California's legitimate interests can be fully protected within the framework of a rule generally permitting press interviews. See pp. 45-36, *infra*. As United States Parole Board Chairman, Maurice H. Sigler, stated to a group of correctional officials: "So far, we have been able to live with the rulings of the courts. They haven't brought about the disastrous consequences some of us have predicted. Instead, the effect of the courts' new interest in corrections has been beneficial." Maurice H. Sigler, "A New Partnership in Corrections", address before the 102d Congress of the American Correctional Association (Aug. 21, 1972).

V. A PRISONERS' RIGHT TO BE INTERVIEWED IS NO SUBSTITUTE FOR A PRESS RIGHT TO INTERVIEW.

Although the court below held that newsmen have no First Amendment right to interview prisoners, it also held that prisoners do have a First Amendment right to be interviewed by newsmen. This distinction turned entirely on the district court's reading of *Branzburg* v. *Hayes,* 408 U.S. 665 (1972),[19] and not at all on any weighing of the respective public, press, and correctional interests. Although the district court was correct in recognizing a prisoner's right to be interviewed by a willing newsman, we submit that a prisoner's right to be interviewed is no substitute for a newsman's right to interview, even though the newsman's right applies only as to inmates willing to be interviewed.

If the only right to an interview is the prisoner's, he bears the full burden of initially asserting it, and of pressing it to final decision through the various layers of the correctional bureaucracy. Prison authorities have total control over prisoners' lives, and prisoners know it. Many inmates who may be willing to be interviewed may be unwilling or unable to take the initiative in requesting an interview or to appeal from one level of the official hierarchy to another.

The press is far more able to bear this burden. It is independent of prison authorities. It is in a better position to present reasons why in the public interest, and perhaps in the interest of the institution, the interview should be held. It has easier access to counsel to assist in asserting the right.

---

[19] That the district court's interpretation of *Branzburg* is erroneous was shown at pp. 14-17, *supra.*

Moreover, the press has the unique expertise, and is uniquely assigned the constitutional function, of determining what matters are newsworthy and what interviews are needed in order to inform the public. Prisoners are not likely to be able to make those judgments with objectivity or expertise.

Of course, a newsman desiring to interview a particular inmate could write to him suggesting that he request an interview. But this circuitous process introduces the delay and other problems accompanying any correspondence by mail with inmates, see pp. 23-24, 26-27, *supra,* which may be fatal to a news story. The risks of delay are compounded where, as is often the case, a newsman wishes to interview several inmates having knowledge about a particular matter. In that situation he would have to write to each of them, and rely on the ability of each to initiate and press forward a separate request to be interviewed by the reporter. To the extent that the separate requests are processed at different rates, the newsman will encounter delay and perhaps the substantial burden of having to travel several times to one of the out-of-the-way places where prisons tend to be located. By contrast, recognition of a newsman's right would permit a reporter to follow up his own requests to make sure that they were being processed with the greatest possible dispatch, and that they would not be separated in the order of priority.

Finally, as a matter of doctrine, the constitutional claims of one group should not be denied on the ground that the parallel claims of another group are being recognized. In particular, the First Amendment right of the public to be informed about prisons and the First Amendment right of the press to gather news

about prisons are independent of any rights of prisoners to be interviewed. If prisoners themselves were held to have *no* First Amendment rights, the public and press interests in information concerning them would remain, and the consequent First Amendment claims of public and press would be undiminished. Similarly, that inmates have a right to be interviewed by willing interviewers does not lessen the justification for recognizing the corresponding but independent rights of the public and the press, resting as they do on different foundations in First Amendment law.

VI. PRESS INTERVIEWS WITH INMATES SHOULD BE PERMITTED EXCEPT WHERE SERIOUS ADMINISTRATIVE OR DISCIPLINARY PROBLEMS WILL DIRECTLY AND IMMEDIATELY RESULT.

In addition to reversing the judgment below with respect to appellants, this Court should hold that under the First Amendment, and subject to reasonable regulations as to time, place, and manner, newsmen shall be permitted to have private, uncensored, face-to-face interviews with individual prison inmates designated in advance by the newsmen, except where prison authorities reasonably determine, on the basis of conditions at the institution or the inmate's past behavior, that a particular requested interview would directly present a serious risk of immediate administrative or disciplinary problems in the prison. *Cf. Washington Post Co.* v. *Kleindienst,* No. 72-1362, pp. 22-24 (D.C. Cir. Feb. 21, 1974).

This rule has several virtues. First, it provides for decisions on interviews on a case-by-case basis, rather than by broad absolute fiats. *Cf. Police Department of Chicago* v. *Mosley,* 408 U.S. 92 (1972) ("[P]redic-

tions about imminent disruption from picketing involve judgments appropriately made on an individual basis, not by means of broad classifications."); *Branzburg* v. *Hayes,* 408 U.S. 665, 710 (1972) (Powell J., concurring). Second, it allows a prison official to make the initial decision on a request for an interview, and does not substitute the judgment of any outside person. Third, it provides a standard for decision, analogous to the "clear and present danger" doctrine, which guides the administrator: it calls upon him to determine whether conditions in his institution are so extraordinary, or the past record of the inmate sought to be interviewed is such, that the interview presents a serious risk of administrative or disciplinary problems. Fourth, this standard does not require an administrator to make a hairline judgment or to offer proof to mathematical certainty. Rather, it requires him to make a good faith judgment of probability, based on his own experience and knowledge, and either the objective conditions at his institution or the past record of the particular inmate involved. If an administrator cannot apply this test, he has no business running a prison. If, under this test, he cannot make the requisite showing, he has no good reason to deny a requested interview.

Finally, the proposed standard properly reflects the weight of First Amendment values. It establishes a presumption in favor of interviews, which is rebutted upon a showing of special need to deny a particular interview. The permissible basis for a denial is narrowly and precisely delineated so as to authorize the least restriction upon First Amendment interests while fully protecting compelling governmental interests. See cases cited at pp. 39-40, *supra.*

CONCLUSION

For the foregoing reasons, *amici* respectfully submit that the judgment below as to appellants herein should be reversed, and the case should be remanded with directions that appellees promulgate in place of § 415.071 a new regulation providing that an interview between a newsman and a prisoner designated in advance may be denied only when it presents a serious danger of administrative or disciplinary problems because of the past behavior of the particular inmate or because of conditions existing at the prison in question.

Respectfully submitted,

JOSEPH A. CALIFANO, JR.
CHARLES H. WILSON, JR.
RICHARD M. COOPER
JOHN B. KUHNS
Williams Connolly & Califano
1000 Hill Bldg.
Washington, D.C. 20006
(202) 638-6565
Attorneys for The Washington Post Company, Amicus Curiae

DANIEL P. S. PAUL
Paul & Thomson
1314 First National Bank Bldg.
Miami, Florida 33131
Attorney for The Miami Herald Publishing Company, a Division of Knight Newspapers, Inc., Amicus Curiae

(Signatures continued on next page)

NORTON L. ARMOUR
Counsel, Minneapolis Star and Tribune Company
5th and Portland Streets
Minneapolis, Minnesota 55415
Attorney for The Minneapolis Star and Tribune Company, Amicus Curiae

JAMES W. RODGERS
Townley, Updike, Carter & Rodgers
220 East Forty-Second Street
New York N.Y. 10017
Attorney for New York News, Inc., Amicus Curiae

ROBERT C. LOBDELL
General Counsel
The Los Angeles Times
202 West First Street
Los Angeles, California 90053
Attorney for The Times Mirror Company, Amicus Curiae.

APPENDIX

HERMAN SCHWARTZ
525 JOHN LORD O'BRIAN HALL, NORTH CAMPUS
STATE UNIVERSITY OF NEW YORK AT BUFFALO
AMHERST, NEW YORK 14260

February 25, 1974

Richard M. Cooper, Esq.
1000 Hill Building
Washington, D. C.

RE: *Pell* v. *Procunier*
73-918

Dear Mr. Cooper:

Pursuant to your request, this is to inform you that plaintiff-appellants hereby consent to the filing of an *amicus curiae* brief on behalf of the Washington Post Company, the Miami Herald, and other newspapers.

Yours truly,

/s/ HERMAN SCHWARTZ
Herman Schwartz
Attorney for Plaintiff-Appellants

HS/jl

STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
STATE BUILDING, SAN FRANCISCO 94102

February 20, 1974

Richard M. Cooper, Esq.
Williams, Connolly & Califano
1000 Hill Building
Washington, D. C. 20006

Dear Mr. Cooper:

Re: Pell v. Procunier
USSC No. 73-918

In response to your letter dated February 14, 1974, this office, as counsel for appellees in the above entitled case, states that it would not object to the filing of an amicus curiae brief in the above entitled case on behalf of the Washington Post Company, the Miami Herald, and other newspapers.

Very truly yours,

EVELLE J. YOUNGER
Attorney General

/s/ JOHN T. MURPHY
John T. Murphy
Deputy Attorney General

JTM/EW

Certificate of Service

I hereby certify that three printed copies of the foregoing Brief of The Washington Post Company, The Miami Herald Publishing Company, a division of Knight Newspapers, Inc., The Minneapolis Star and Tribune Company, New York News, Inc., and The Times Mirror Company, *Amici Curiae,* in Support of Reversal, were mailed, first-class air mail, postage prepaid, this 7th day of March, 1974, to each of the following:

Herman Schwartz, Esq.
525 O'Brian Hall, North Campus
State University of New York at Buffalo
Amherst, New York 14260,
Attorney for Appellants

Hon. Evelle J. Younger
Attorney General of California
Department of Justice
State of California
State Building
San Francisco, California 94102,
Attorney for Appellees, and also Attorney for Appellants in No. 73-754

Stanley A. Bass, Esq.
10 Columbus Circle, Room 2030
New York, New York 10019,
Attorney for Appellees in No. 73-754

Three copies of the aforementioned Brief were hand-delivered this 7th day of March, 1974 to:

Hon. Robert H. Bork
Solicitor General of the United States
Department of Justice
Constitution Avenue and 9th Street, N.W.
Washington, D. C. 20530

In addition, one printed copy of the foregoing Brief was mailed, first-class air mail, postage prepaid, to:

Robert J. King, Esq.
Liddell, Sapp, Zivley & Brown
510 Gulf Building
Houston, Texas 77002,
Attorney for The Houston Chronicle Publishing Co., *Amicus Curiae*

/s/ RICHARD M. COOPER
Richard M. Cooper